IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8033 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

NANUBHAI RAVJIBHAI HALPATHI

Appearance:

1. Special Civil Application No. 8033 of 2001
MR RV DESAI, AGP for Petitioner No. 1
RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 12/12/2001

ORAL JUDGEMENT

Heard Mr RV Desai, learned AGP for the petitioner-State of Gujarat. Though the respondent was served on 20.10.2001, none appears for the respondent when the matter is called out.

2. This petition under Articles 226 and 227 of the Constitution challenges the judgment and award dated 24.7.2000 passed by the Labour Court, Navsari in Reference (LCN) No. 232 of 1987 by which the Labour Court has directed the petitioner-employer to reinstate the respondent to the original post with continuity of service and with 50% backwages and costs quantified at Rs.1000/-.

3. The respondent was employed as a daily wager in the year 1975. The respondent raised an industrial dispute that with effect from 1.4.1984 his services were illegally terminated. Thereafter the reference was made to the Labour Court in April, 1987. The petitioner-employer raised a contention that the petitioner does not carry on any industry as defined in Section 2(j) of the Industrial Disputes Act, 1947. Other defences were also raised on facts. However, the Labour Court held that the petitioner carries on an industry and passed the aforesaid award.

4. At the hearing of the petition, the learned AGP has relied on the decision of the Apex Court in the case of Executive Engineer (State of Karnataka) vs. K. Somasetty, AIR 1997 SC 2663 which has been followed by this Court in the case of Shankerji Cheljaji Thakore vs. State of Gujarat, 2000(1) GLH 482 holding that the irrigation department is not an industry.

5. In view of the aforesaid decision of the Apex Court as well as the decision of this Court, this Court sees no reason to consider any previous decision on the question whether the petitioner carries on an industry within the meaning of the Industrial Disputes Act and respectfully follows the aforesaid decisions. Moreover, in the case of State of Gujarat vs. Pratamsingh Narsinh Parmar, JT 2001 (3) SC 326, the Apex Court has held as under :-

> "5. If a dispute arises as to whether a particular establishment or part of it wherein an appointment has been made is an industry or not, it would be for the person concerned who claims the same to be an industry, to give positive facts for coming to the conclusion that it constitutes `an industry'. Ordinarily, a Department of the Government cannot be held to be an industry and rather it is a part of the sovereign function. To find out whether the respondent in the writ petition had made any

> assertion that with regard to the duty which he was discharging and with regard to the activities of the organization where he had been recruited, we find that there has not been an iota of assertion to that effect though, no doubt, it has been contended that the order of dismissal is vitiated for non-compliance of Section 25-F of the Act. The State in its counter affidavit, on the other hand, refuted the assertion of the respondent in the writ petition and took the positive stand that the Forest Department cannot be held to be an industry so that the provisions of Section 25-F of the Act cannot have any application. In the absence of any assertion by the petitioner in the writ petition indicating the nature of duty discharged by the petitioner as well as the job of the establishment where he had been recruited, the High Court wholly erred in law in applying the principles enunciated in the judgment of this Court in Jagannath Maruti Kondhare (JT 1995 (9) SC 465) to hold that the Forest Department could be held to be `an industry'."

In view of the aforesaid principle, it is clear that the burden of proof was on the respondent-employee. The petitioner-employer had specifically contended that the petitioner was not carrying on any industry within the meaning of the Industrial Disputes Act. In this view of the matter, the burden was on the respondent-employee to prove that the petitioner-employer is carrying on an industry within the meaning of the Industrial Disputes Act. A perusal of the judgment and award shows that no such evidence was led or material was produced by the respondent-employee to show that the petitioner carries on any industry.

6. In view of the aforesaid decisions, it is clear that when the petitioner is not carrying on any industry, the question of passing any award under the Industrial Disputes Act does not arise and the same will have to be set aside on this short ground.

7. The petition is accordingly allowed. The impugned judgment and award dated 24.7.2000 passed by the Labour Court, Navsari in Reference (LCN) No. 232 of 1987 is hereby quashed and set aside and the reference is dismissed.

8. Rule is made absolute with no order as to costs.

(M.S. Shah, J.)

sundar/-